

STATE OF MICHIGAN
COURT OF APPEALS

RANDIE K. GRIER,

Plaintiff-Appellant,

v

MUJO ZENELOVIC,

Defendant/Counter-Plaintiff,

and

RE/MAX CLASSIC, a/k/a LCRN, INC.,

Defendant/Counter-Plaintiff-
Appellee.

UNPUBLISHED
February 22, 2011

No. 295415
Oakland Circuit Court
LC No. 2008-095028-CK

Before: SERVITTO, P.J., and GLEICHER and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant Re/Max's motion for summary disposition and dismissing plaintiff's complaint against Re/Max. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff entered into a two-year lease with defendant Zenelovic on May 29, 2008, and paid rent for June and July. Plaintiff asserts that he did not pay rent starting in August because it became apparent Zenelovic was not paying the mortgage or utility bills and that foreclosure was imminent. On October 3, 2008, plaintiff filed a complaint that was later amended to include a count for "anticipatory breach," unjust enrichment, and "fraud as to both defendants." Among the allegations, plaintiff asserted that he had paid out-of-pocket for substantial repairs to the property, and later argued that he was owed \$30,000 for these repairs. The only claim against Re/Max alleged fraud.

Specifically, for that count, the amended complaint alleged:

42. That Plaintiff incorporates by reference paragraphs 31 and through 41 of Count-II as if herein actually stated.

43. That Defendant, MUJO ZENELOVIC, at the time of executing the lease agreement between the parties on May 29, 2008, represented to Plaintiff that he had title to the premise of 1935 Sherwood Gln., Bloomfield, Michigan 48302

44. The Defendant, MUJO ZENELOVIC, represented on May 29, 2008 at the time of executing the lease agreement to Plaintiff that there was no cloud on the title to the premises.

45. That Defendant, the person appearing on May 29, 2008 at the time of executing the lease agreement to Plaintiff that he was MUJO ZENELOVIC, the fee simple owner of the premises of 1935 Sherwood Gln.

46. That Defendant, the person appearing and signing the lease agreement executed between the parties represented to Plaintiff when he signed the agreement as landlord that he was MUJO ZENELOVIC, the owner of the 1935 Sherwood Glynn.

47. The said representations as cited were material representations.

48. That the representations made by Defendant were false.^[1]

49. That Defendant knew that the representations were false when they were made.

50. That Defendant made the representations with the intention that plaintiff would act upon them or rely upon them[.]

51. That Plaintiff acted in reliance upon the representations by entering and signing the lease agreement for the premises.

52. That plaintiff consequently suffered injury[.]

53. That Plaintiff request [sic] that this Honorable Court enter a judgment in Plaintiff' [sic] favor against Defendants for any compensatory damages which he may be entitled; and for treble damages pursuant to MCL 600.2919; MSA 27A.2919; under these circumstances.

Both defendants filed counter-complaints, Zenelovic for plaintiff's failure to pay the rent and Re/Max for plaintiff's filing of a frivolous suit. Plaintiff moved for summary disposition, asserting there was no question of material fact that defendants were liable as set forth in the complaint. Shortly after that filing, the case evaluation resulted in an award of \$0 for both the

¹ Apparently, the lease was in fact executed by Zenelovic's nephew, Safet Palaj, who manages his uncle's affairs in Michigan.

complaint and Re/Max's counter-complaint,² and the panel unanimously checked the line indicating the "action"—but not the "defense"—was frivolous.

Re/Max filed a response to plaintiff's motion, including a cross-motion seeking summary disposition under MCR 2.116(I)(2), arguing that nothing in the complaint alleged any facts showing fraud by Re/Max. Re/Max also moved for dismissal under MCR 2.403(N)(3)(c), which requires a court to dismiss a claim found frivolous by the evaluation panel if the party bringing the claim fails to post a bond or fails to seek judicial review of the award.

The trial court granted both of Re/Max's motions in a written opinion and order. The court stated, "Plaintiff's Amended Complaint contains no specific allegations of fraud relating to any actions or representations by Defendant Re/Max. Plaintiff has not presented any evidence that he reasonably relied on any representations made by Defendant Re/Max." The court also stated, "Because Plaintiff neither posted a bond nor requested review, dismissal is required [under MCR 2.403]."

In this Court, plaintiff argues that, although the complaint was not detailed regarding Re/Max, plaintiff's motion for summary disposition outlines the factual support of the claim. Re/Max's representation to plaintiff that he was dealing with Mujo Zenelovic was a hoax. The person signing the lease had no power of attorney to sign for Zenelovic, and had no rights to the property that was the subject of the contract. As a result, plaintiff has suffered the injury of having paid rent and a deposit and has to move due to the foreclosure taking place. Plaintiff asserts that even if Re/Max did not know the man signing the lease was not Zenelovic, it should have known, and thus the representation was made in reckless disregard for the truth. The trial court completely disregarded the evidence plaintiff submitted with his motion brief.

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). Although substantively admissible evidence submitted at the time of the motion must be viewed in the light most favorable to the party opposing the motion, the non-moving party must come forward with at least some evidentiary proof, some statement of specific fact upon which to base his case. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999); *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

The trial court properly granted summary disposition. The general rule for a claim of fraud is that the plaintiff must show:

- (1) That defendant made a material representation; (2) that it was false; (3) that when he made it he knew that it was false, or made it recklessly, without any knowledge of its truth and as a positive assertion; (4) that he made it with the intention that it should be acted upon by plaintiff; (5) that plaintiff acted in

² Proceedings involving Zenelovic were stayed due to his pending bankruptcy proceedings.

reliance upon it; and (6) that he thereby suffered injury. [*United States Fidelity & Guaranty Co v Black*, 412 Mich 99, 114; 313 NW2d 77 (1981).]

MCR 2.112(B)(1) requires the circumstances constituting fraud to be stated with particularity *in the allegations*.

Plaintiff's complaint contains no facts identifying any false representations by Re/Max. Plaintiff also provides no evidence supporting his assertions that Re/Max knew the signer was not Zenelovic, and he does not show injury arising from reliance on the alleged "hoax." In fact, plaintiff ended up in the exact same position in which he would have been had Zenelovic himself signed the lease.

Plaintiff also raises arguments about the dismissal of his claim under MCR 2.403. However, plaintiff did not object to case evaluation and did not seek judicial review pursuant to MCR 2.403(N)(2). Nor did plaintiff post bond pursuant to MCR 2.403(N)(3). Thus, once the claim was found frivolous, the court correctly dismissed this claim when plaintiff did not seek review and failed to post bond. MCR 2.403(N)(3)(c).

Affirmed.

/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher
/s/ Douglas B. Shapiro